IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6733 of 1999

WITH

SPECIAL CIVIL APPLICATION NO.6680, 6732, 6734,
6740, and 6741 of 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVARBHAI GORDHANBHAI BARIA

Versus

STATE OF GUJARAT

Appearance:

MR MANOJ N POPAT for Petitioner No. 1

MR PD BHATE for Respondent No. 1,2

MR PARESH UPADHYAY for Respondent No. 2

(MR MUKESH R SHAH) for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/07/2004

COMMON ORAL JUDGEMENT

1. In this group of petitions, the petitioners have prayed for a direction to the respondents to regularise their services and to grant them regular pay-scale.

2. The petitioners were working with the respondent Nagarpalika since last many years in different capacities and they were employed on daily wage basis.

3. The petitioners have mainly relied upon a decision of the Supreme Court report in AIR 1984 SC 161 whereby benefits of regularisation in service were extended to the other similarly situated employees in the service of Panchayat. It is the case of the petitioners that in spite of repeated representations the respondent Nagarpalika has not regularised their services.

4. The Deputy D.D.O. has filed affidavit in reply in para 6 it is stated as under:

"6. In the alternatively, I say and submit that the petitioner is not entitled to the relief prayed for in the aforesaid Special Civil Application. In view of the fact that the petitioner who is serving as contractor, daily wages Mali was appointed on 4/1/94 by the Kalol Municipal Borough without following any due procedure of selection and the appointment of the petitioner can be said to be back door entry and merely because the petitioner has worked since 1992, service of the petitioner can not be regularised and otherwise purpose of the selection would be frustrated. I further say and submit that even the appointment of the petitioner is not on the sanctioned post and without obtaining any prior permission from the State Government and without getting the post sanctioned, the petitioner has been appointed by the Kalol Municipal Borough without following any due procedure of selection and without inviting application from the open market and without any competition and without holding any competitive test. Under the circumstances, the petitioner cannot be given benefit of regularisation, otherwise it will be giving protection upon illegal appointment."

Therefore, it is clear that the appointment in question was without prior permission from the State Government and without getting the post sanctioned.

5. Learned counsel for the respondent submitted that the facts of the case of petitioner in Special Civil Application No.10158/96 and that of the present petitioners are quite different. The petitioner of other Special Civil Application upon which reliance has been placed by the petitioner were appointed prior to 1984 and as per the Government Circular/Resolution dated 9.9.96, appointments made between 10.7.1978 and 5.6.1984 are required to be regularised. He submitted that in pursuance of the order of the Supreme Court the appointments made by the concerned Gram/Nagar Panchayat between the period from 10.7.1978 to 5.6.84 were required to be regularised after getting necessary sanction from the State Government and a Resolution has been passed by the State Government. Therefore those facts are not applicable to the present case. Learned counsel for the respondent has also pointed out that this Court (Coram: Miss R.M. Doshit J.) by judgement and order dated 6.3.1998 passed in SCA No.9264/93 has considered similar question and considering the judgement of the Hon'ble Supreme Court of India in the case of State of Gujarat Vs. Ramanlal Kishordas and others, reported in AIR 1984 SC 161 and other judgements, held that the employees of the Gram Panchayat or Nagarpalika not selected either by the Selection Board or by the Selection Committee established under section 210 or 211 of the Guajrat Panchayats Act cannot be treated as member of the Panchayat Services as envisaged under section 203 of the Act and unless the petitioner establishes that he is the member of the Panchayat Service as envisaged under section 203 of the Act he cannot be held to be a Civil Servant of the State and in that view of the matter, he cannot be allowed to be entitled to all the service benefits of such a Civil Servant of the State would be entitled to.

6. Even otherwise, in view of the decision of the Full Bench of this Court dated 9.7.2004 in the case of Amreli Municipality Vs. Guajrat Pradesh Municipal Employees Union in Special Civil Application No.5746/1999 and other allied matters, more particularly, paragraphs 12.1.13 and 12.1.15 prayer for regularisation cannot be granted. The said paragraphs read as under:

"12.1.13 Even if it is held that the Labour Court/ Industrial Tribunal has wide jurisdiction to alter service conditions, it can

exercise such powers subject to the recruitment rules, availability of sanctioned posts and subject to the grant and limits of budgetary provisions. When there is no permanent post, no direction can be given to the authorities to absorb daily wage employees by creating new posts. It is the common phenomenon in the case of Nagarpalikas/ Municipalities/ Government Corporations where such appointments are made on political considerations. The parties in power may recruit their own persons as daily rated employees and thereafter by seeking orders from the Court, they want to absorb such employees on permanent establishment. Time and again, such practice is depricated in so many words in the judgments referred by us. The Panchayats, Municipalities, Municipal Corporations or Government Corporations as well as Government establishments are facing severe financial crisis only because of such staff which may be required for the time being, but to make them permanent would definitely adversely affect the financial substratum of respective organisations and the the Courts should not be party to such illegal and irregular appointments by allowing them to be continued at the cost of public exchequer. We are conscious of the fact that by not approving the appointments of such daily wagers, it will be very difficult for them to survive and the question of their livelihood would arise. Keeping this aspect in mind, we do feel that in appropriate cases, their interests are required to be protected. We accordingly give following guidelines.

(1) If casual workers or daily rated workers are not required by the Local bodies and whose services are likely to be terminated, they should be relieved on the principle of "last come, first go". In the event of filling up the posts in future, those who are eligible and qualified from and amongst the relieved workmen shall be preferred by waiving the age limit.

(2) If the workmen who have continued for years as temporary employees, in the event of their termination, the authorities will see that no unqualified person is appointed in their place.

(3) The question of regularisation can also be considered by the authorities before terminating

services provided the workers are eligible on the sanctioned posts.

(4) If the posts are not sanctioned, the authorities may take such steps which are necessary in accordance with the provisions of law/ rules/ circulars within the budgetary provisions.

12.1.15 In view of the above discussion, we answer the question referred to us as under:

(i) The Labour Court/Industrial Tribunal has no jurisdiction to issue direction or pass an award regularising services of employees of a Municipality or local authority without there being any 'sanctioned set up' and no person can be regularised if such a person had entered service without following selection process under the title of daily rated employee.

(ii) In view of our answer to the above question, the judgment rendered by Division Bench in the case of Kalol Municipality Vs. Shantaben, reported in 1993(2) GLR 997 is now no longer a good law in view of subsequent decisions rendered by the Apex Court and more particularly the decision in the case of N.S.Giri Vs. Corporation of State of Mangalore, AIR 1999 SC 1958.The subsequent decision rendered by the Division Bench of this Court in the case of Halvad Nagarpalika and ors. Vs. Jani Dipakbhai Chandravadanbhai and ors., reported in (2003) 2 GHCJ 397 is held to be a good law.

7. In the result, there are no merits in the petitions and accordingly they are rejected. Rule is discharged with no order as to costs. The respondents are directed to comply with the guidelines issued by this Court in the above Full Bench Decision.

[K.S. JHAVERI J.]

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